

US.Pat.Apl.Nr: 10/ 757,563

Docket 364-12US

**Remarks**

responsive to O/A dated 19 August 2004

1. The amendments to the claims, as enclosed, take care of the formal matters as mentioned in the O/A.

2. The examiner indicated that claims 13,14 would be allowed if presented in independent form, and we have done that.

We note that, presumably, claims 16-18 should also have been indicated as allowable, since these claims depend from indicated-allowable claim 15.

3. We have now introduced into claim 1 the feature (originally mentioned in claim 7) that the cap is much larger than the top-rim of the post.

The "cap" in Ernst is a marble. There is a marked difference in the manner in which the cap is knocked off the top of the post when the cap is large, as in our apparatus, versus small, as in Ernst. Our cap must be large, in order for the cap to offer a reasonable target to a person pitching the missile over a space of several feet. Ernst's marble can only reasonably serve as a target when aimed at from a few inches. In our apparatus, the post can be the same form and size as a beer bottle, but our cap has to be so large (to serve as a reasonable target) as to be grossly out of proportion with respect to the bottle; we have found that this out-of-proportion-ness enhances, rather than subtracts from, the "fun" aspect of our game.

On the other hand, his marble being small, Ernst can simply rest his marble on top of the post. Our cap is very large, i.e. it is so large that if we were to simply rest it on top of our post, the cap would simply topple off. (This is not absolutely true: one can imagine that, with very careful placement, the cap might be made to balance -- just as it could not be ruled out that one might be able to balance a plate on a pencil -- but the point is that that could not form the basis of an absorbing and entertaining outdoor pitching game.)


We have recognised that, because our cap is large, and so liable to toppling off, it has to engage the post. We have recognised that it is possible to achieve just the right degree of mechanical attachability, which enables the cap to remain in place unless struck by a direct hit, without compromising the ease and simplicity with which a person can (manually) apply the cap to the post.

We have recognised that it is possible to engage the cap with the top-rim of the post in a number

of ways, including the preferred tapered-socket structure, but also including the Velcro or magnet structures as described. It is clear from the prior art that no-one has recognised that a game can be made that uses a very large cap that is engaged with the top-rim of a much-smaller post. We have recognised that it is possible readily to achieve the required degree of tenacity of attachment automatically, simply by pressing the large cap, by hand, firmly down onto the top of the post.

It was intimated in the O/A that claim 7 would be allowable. We have incorporated only one of the two features of the as-filed claim 7 into claim 1, but still, we feel, for the above reasons, that claim 1 is now inventively distinguished from the prior art, and we look forward to receiving a notice of allowance.

Submitted by:



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Enclo:  
amended claims (5 sheets)